

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1957 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

ASUBIBI MOHMEDBHAI QURESHI BY HER HEIRS

Versus

ABDUL HAMID VORA

Appearance:

MR BR SHAH for Petitioners

MR DHIRENDRA MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/03/2000

ORAL JUDGEMENT

1. Petitioners herein are the original plaintiffs of
H.R.P.Suit No.3288/74. The aforesaid suit was filed by
the plaintiffs in the court of Small Causes at Ahmedabad

for getting the decree for possession from the defendant nos.1 and 2. It is the case of the plaintiffs that, they are the owners of the suit property which was purchased by them on 17.8.1971. The defendant No.1 is a tenant on the ground floor at a monthly rent of Rs.23/-. According to the plaintiffs, rent from 1.4.1969 is due from the defendant No.1 and he had not paid the rent inspite of the demand. It is further the case of the plaintiffs that, the defendant No.1 has sublet the premises to the defendant No.2. Therefore, the said suit was filed for getting the decree for possession on the aforesaid grounds.

2. The defendant No.1 did not remain present in the suit and therefore, it proceeded against him ex parte. So far as the defendant No.2 is concerned, he filed his written statement at Exh.20. The defendant No.2 denied the suit of the plaintiffs. It was stated that, he is residing in the suit premises since 1946 and that he is the real tenant of the suit premises. According to the defendant No.2 he has paid the rent upto 17.8.1971 to the previous landlord Natvarlal and that he was not in arrears of rent, the defendant No.2 has raised the dispute of standard rent and contended that, contractual rent of Rs.23/- per month is excessive.

3. Learned trial Judge framed various issues at Exh.28 and thereafter, after recording the evidence of the parties and after hearing the arguments of both the sides, came to the conclusion that the defendant No.2 was the tenant of the suit premises and that the defendant No.1 was not the tenant of the suit premises. However, learned trial Judge decreed the suit against him on the ground that he has not paid the arrears of rent. The standard rent of the suit premises was fixed at the rate of Rs.23/- per month. Accordingly, the trial court decreed the suit for possession. The aforesaid decree of the trial court was challenged by the defendant No.2 by filing an appeal being Civil Appeal No.39/79 before the Appellate Bench of the Small Causes Court, Ahmedabad. The appellate court came to the conclusion that, the defendant No.2 was the real tenant of the suit premises and since there was no notice to the defendant No.2 as contemplated by Section 12(2) of the Rent Act, the suit could not have been filed against him on the ground of arrears of rent, and that therefore there was no question of passing the decree for possession against the defendant No.2 on the ground of arrears of rent. On the aforesaid reasonings, the appeal of the defendant No.2 was allowed by the Appellate Bench and the decree of the trial court was set aside. Being aggrieved by the

aforesaid decree of the Appellate Bench, petitioners landlords has filed the present revision application before this court.

4. I have gone through the judgments of both the courts as well as record and proceedings of the case. The trial court in terms came to the conclusion that the defendant No.2 was the tenant of the suit premises. It is not in dispute that, demand notice was given to the defendant No.1 because according to the landlord, defendant No.2 was the sub-tenant of the defendant No.1. Before the Appellate Bench the landlords have not challenged the findings of the trial court to the effect that the defendant No.2 is the real tenant of the suit premises. Before this court, on behalf of the defendant No.2, an affidavit is filed which is part and parcel of the compilation of the paper book of the revision application. In the said affidavit, it has been stated by the original defendant No.2 that, at the time of hearing before the Appellate Bench he was present and that applicants were not present and that the advocate for the opponents before the Appellate Bench had not raised plea in his arguments that the findings of the trial court that, opponent herein is tenant and not the sub-tenant, is not correct or that the said findings should be reversed. The defendant No.2 has also filed another affidavit of one Abdul Rahim who is a friend of the defendant No.2 and according to him, he was also present when the appeal was heard. His affidavit is also on the same line, that of the defendant No.2.

5. Even otherwise, voluminous evidence is there on the record to show that the defendant No.2 was residing in the suit property from the beginning and inspite of the said fact, plaintiffs gave notice under section 12(2) of the Rent Act to the defendant No.1. Learned Appellate Judge has considered the notice at Exh.34 by which the plaintiffs had called upon the defendant No.1 to pay arrears of rent and asked him to vacate the suit premises. The Appellate Bench found that in the suit notice, there was no demand of rent from the defendant No.2, naturally because the plaintiffs had never recognised the defendant No.2 as their tenant. The defendant No.1 was not interested in the suit premises and therefore, he had refused the suit notice. The defendant No.2 gave reply at Exh.36 in which he has stated that, he was tenant of the suit premises. Admittedly, the plaintiffs have purchased the suit property in 1971. According to the defendant No.2, he had paid the rent to original owner Natvarlal upto 17.8.1971. Plaintiffs gave rejoinder at Exh.37 on

27.6.1974 admitting that, no amount of rent was demanded from the defendant No.2, as the tenant of the suit premises was defendant No.1 and that the rent was demanded from the defendant No.1 only. In that view of the matter, it is clear that, there was no notice under section 12(2) of the Rent Act. In that view of the matter, there was no question of passing the decree against the defendant No.2 on the ground of arrears of rent. As per the provisions of the Rent Act, before instituting the suit for possession on the ground of arrears of rent, demand notice as contemplated by section 12(2) of the Rent Act is required to be served on the tenant. Since, no such notice was served on the tenant, naturally, no suit could have been instituted against the tenant on the aforesaid ground of arrears of rent. In that view of the matter, the suit itself is not maintainable in so far as the defendant No.2 is concerned who ultimately was found to be real tenant of the suit premises, in that view of the matter, the Appellate Bench was perfectly justified in allowing the appeal of the original defendant No.2.

6. When the suit itself was not maintainable without demand notice, there was no question of regular deposit by the defendant No.2 before the trial court or even before the appellate court. Learned Appellate Bench has given detail reasoning in this behalf in para 12 of its judgment and according to me, the Appellate Bench was perfectly justified in reaching the aforesaid conclusion. I, therefore, do not see any error of law which requires to be corrected by this court in this revision application. I do not find any infirmity in the order of the Appellate Bench. In that view of the matter, present revision application is devoid of any merits and the same is accordingly dismissed. Rule is discharged with no order as to costs.

(pathan)